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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,473	04/20/2006	Bertold Bast	1604BPE-14-PUS	7219

22442 7590 03/26/2010
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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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03/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,473	Applicant(s) BAST ET AL.	
	Examiner ROBIN HYLTON	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-11,15-29,32,35-38 and 40-46 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,11,17-19,27-29,35,40 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-10,15,16,20-26,32,36-38 and 42-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10-31-06; 11/19/09</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Claims 3,4,11,17,18,27-29,35,40 and 41 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 19, 2009.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plastic material of the closure must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. See MPEP § 608.02(d) illustrating the proper cross hatching for plastic material.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the plastic material of the closure as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: ‘radially oriented vent passage) and “axial vent passages”.

Claim Objections

5. Claims 8 and 26 are objected to because of the following informalities: In claim 8, line 2, “a carrier or releasably holding” and in claim 26, line 3, “an radially” are grammatically incorrect. Appropriate correction is required.

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Claim Rejections - 35 USC § 112

6. Claims 1, 6-10, 15, 16, 19-26, 32, 36-38, and 42-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “made mainly from” in claim 1 renders the claim indefinite since it is unclear if the can is metal or a metal composite.

The structure of claim 16 is not clearly set forth.

Claim 37 depends from a canceled claim (14).

In claim 43, it is unclear what is really intended by “diameter/depth”. Typically, the terms are not used interchangeably as it appears to be used here.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 6-10, 15, 16, 19, 23, 26, 32, 36, 38, 42, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer (DE 198 02 953) in view of Wirth (DE 29518382).

Sauer discloses a beverage can mainly made from metal sheet and as a two part can system having, a wall portion and two axial ends thereof, and on one axial end of the wall portion an openable or closable first portion and the other axial end of the wall portion a non-openable second portion, and having a reclosable closure, wherein: (i) said first portion (5) having an axially outward vaulted, convex dome, provided as a bottom end of the beverage can (when rotated 180° from the depicted orientation), the bottom end having no

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seam and extending in the convex dome profile laterally from a central axis; (ii) said second portion having a substantially flat panel (2) and a seam surrounding said panel and attaching said panel to the wall of the can; (iii) the reclosable closure being releasably secured to the convex bottom end as the first axial portion, wherein said closure has a peripheral contour supporting the closed beverage can for a steady stand on a flat level surface.

Sauer is silent regarding a peripheral contour having an axially protruding rim shaped at least partly in a circumferential direction, and said closure having a substantially flat bottom panel, surrounded by said at least partly circumferential rim, wherein no portion of said bottom panel exceeds the rim's axial protrusion.

Wirth teaches it is known to provide a container with a closure (6) having a peripheral contour supporting the closed beverage can for a steady stand on a flat level surface, said peripheral contour having an axially protruding rim shaped at least partly in a circumferential direction, and said closure having a substantially flat bottom panel, surrounded by said at least partly circumferential rim, wherein no portion of said bottom panel exceeds the rim's axial protrusion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of the closure of Wirth to the container of Sauer to provide a more stable closure holding the container with the inverted position.

Regarding claim 8, the first portion has a carrier (7) permanently mounted thereto.

Regarding claim 23, portion **8a** is a tamper evident device.

Claim 32 is a product-by-process claim and does not further limit the claimed beverage can. MPEP § 2113.

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Regarding claim 44, see the English machine translation describing the cap (8) being made of PE or PET.

9. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer.

Sauer discloses the claimed invention except for the convexity depth being in the range of diameter/depth between 2 and 33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the convexity depth in the range of diameter/depth between 2 and 33, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Doing so provides a can of properly proportioned dimensions as desired for its intended use.

10. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer.

Sauer discloses the claimed invention except for the hole diameter being in the range of 20mm to 40mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hole diameter in the range of 20mm to 40mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Doing so provides a can of properly proportioned dimensions as desired for its intended use.

11. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer in view of Bartur et al. (US 5,853,096).

Sauer discloses the claimed can except for a gasket and vent passages.

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Bartur teaches it is known to provide a closure with a sealing mechanism including a gasket or a protrusion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the closure of Sauer with a sealing gasket to prevent leakage and degradation of the can contents.

Regarding claim 21, wherein the instant claims do not set forth structure for the vent passages, the closure of Fig. 3 shows radially oriented vent passages.

12. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 21 above, and further in view of Oberhofer et al. (US 7,380,683).

Sauer as modified discloses the claimed can except for vent passages in the carrier.

Oberhofer teaches it is known to provide a container carrier (10) with vent passages.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of vent passages in the carrier of Sauer to provide venting of the can and prevent missiling of the closure upon opening the can.

13. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer in view of Littlefield (US 4,076,151).

Sauer discloses the claimed can except for the carrier having a ring on both the inner and outer portions of the aperture and a telescoping portion.

Littlefield teaches it is known to provide a can with a closure and telescoping spout and carrier combination.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the closure and carrier of Sauer with the closure and telescoping spout and

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carrier combination of Littlefield. Doing so provides a spout which can be moved for better insertion into a receiving container into which the contents are to be dispensed to prevent spillage.

Conclusion

14. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

16. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

17. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

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18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday, Tuesday, Thursday, and Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
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- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

March 23, 2010

/Robin A. Hylton/
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